

Amendment to the Drawings:

The attached sheets of drawings include renumbering of the original drawing Figures 1-15. The renumbering now includes a Figure 7, and now the Figures are numbered 1-14, as the specification states. These sheets, Figures 1-14, replace the original sheets including Figures 1-15. No other changes have been made to the Figures. Applicant hereby requests that said proposed amendments be approved and accepted.

REMARKS/ARGUMENTS

Drawings

The Examiner has requested certain changes to the drawings of this application so it may proceed to allowance. The drawings were inadvertently mis-numbered with Figure 7 being inadvertently labeled as Figure 8, and so on. In response to said request, the Applicant is renumbering Figures 1-15, to include a Figure 7, and is now Figures 1-14.

A few additional numbers have also been added to Figure 7, with no new matter being added and as referred to in the specification as filed.

New drawings and annotations showing changes to the drawings are being filed herewith.

Claims

The Applicant submits that claim 3 has been amended, per the Examining Attorney, as shown hereinabove.

The Applicant notes that the Examining Attorney has stated that claims 1-4 is/are pending in this application. Applicant submits herewith a Preliminary Amendment filed on January 2, 2004, in this matter (a copy of which is enclosed herewith). Therein, please find that claims 1-15 is/are pending in this application.

Claim Rejections – 35 USC § 102

The Examining Attorney has rejected claims 1 through 4 as being anticipated by Cooper (5,944,496). The Applicant respectfully requests the Examining Attorney reconsider the rejection based on the arguments set forth below.

The applicant submits that Cooper does not anticipate this invention for the reasons, points and legal authorities set forth below.

First of all, Cooper does not disclose nor can it perform the function of providing a particle relief passageway. While there is a port for the flow of metal, item 56, there is no disclosure that it is at a pre-determined size to allow certain particles to pass through. Under old designs, if there was little or no clearance, metal could flow but particles could not flow. In some applications or embodiments, it is desired to allow some particles through, but only those of a pre-determined size or category of size. This invention, as distinguished from the Cooper reference, provides for that and functions for that. The reference on the other hand only indicates it is a port for the flow of metal.

There is no anticipation by a prior patent not known or recognized as being capable of performing the function of the patented device, but rather the prior patent must itself do the teaching. RCA Corp. v. Applied Digital Data

Systems, Inc., 730 F.2d 1440, 221 U.S.P.Q. 385 (1984); Edstrom-Carson & Co. v. Onsrud Machine Works, Inc., 129 U.S.P.Q. 457.

In fact the Cooper reference teaches away from this invention and the use or purpose of the particle relief passageway, as the reference provides a deflector for knocking particles away so they do not clog the small port. The system provided by this invention provides for some desired flow-through of particles of a pre-determined size without clogging. The patent indicates that the vanes need to extend beyond the input port in order to deflect the particles (see for example column 5, lines 15-25).

The Cooper reference does not disclose the purpose, means and mechanism for accomplishing the instant invention. The Cooper reference does not indicate that the port of the sizing of the port has any purpose other than the flow of liquid metal, there is no disclosure regarding particle passage or particle screening. There is no anticipation where a reference does not disclose the purpose, means and mechanism for accomplishing the instant invention but rather is restricted to a limited and different means. Sperry Products, Inc. V. Aluminum Company of America, 120 U.S.P.Q. 362.

The Cooper reference further does not solve the problem that this invention for the reasons stated above. There is no anticipation if a prior patent does not solve the problem(s) which the subsequent patent successfully solves.

Technical Development Corporation v. Servo Corporation of America, 125 U.S.P.Q. 133.

Prior Art Made of Record and Not Relied Upon

The Applicant notes the prior art made of record but not relied upon and asserts that for the reasons set forth above, the claims are allowable over the art made of record.

Information Disclosure Statement (IDS)

The Applicant has provided herewith a copy of the IDS as filed on October 26, 2001. Further, Applicant has provided herewith a copy of the Supplemental IDS as filed on January 2, 2004.

Conclusion

Applicant therefore submits Claims 1-15 are in a position to proceed to allowance.

Respectfully submitted,

Dated: 12-8-05

By: 

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Attachments: Replacement Sheets (For Sheets 1-8, Figures 1-14);
Annotated Sheet Showing Changes (For Sheets 1-8, Figures 1-15); IDS filed 10/26/05; and Preliminary Amendment and IDS filed 1/2/04.